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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,381	10/14/2004	Steven M Kessel	205332-9011-US01	2105
1131	7590	06/27/2006	EXAMINER	
MICHAEL BEST & FRIEDRICH LLP Two Prudential Plaza 180 North Stetson Avenue, Suite 2000 CHICAGO, IL 60601			QUINN, COLLEEN M	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/511,381	Applicant(s) KESSEL ET AL.	
	Examiner Colleen M. Quinn	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/14/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 32, 42 and 55 are objected to because of the following informalities:

Regarding claim 32, page 23, line 10, it appears the applicant left out the word "the" in between the words "...shelf to" and "front of the support..."

Regarding claim 42, page 24, line 28, it appears the applicant left out the word "to" in between the words "...are adjacent" and "one another..."

Regarding claim 55, page 26, line 27, it appears the applicant intends to state "...in one of a forward or rearward direction..." rather than "...and..."

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9,15 and 16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention by claiming the shelf is at least partially supported. It is unclear how the cantilevered shelf is only partially supported. Appropriate correction is required

Claims 22 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear if there are connectors on both the shelf

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and the post or if the shelf connectors are merely receiving portions for the extending connectors on the post. Appropriate correction is required.

Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant claims a third connector on the second post; if the applicant intends to claim a second connector on the second post for assembling the second shelf, it should be stated clearly.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Wende (US 3,184,068). Wende discloses first and second support posts (1,2), a plurality of first (22) and second (22') connectors, extending laterally from the respective posts (Figures 2 and 3), the connectors being pins (23,23', 24,24') that extend through (Figures 2 and 3) apertures (3,4) in the posts, a cantilevered shelf (Figure 1), releasably attached to the connectors and adjustable in height, the shelf comprising, a first side bracket (5), a second side bracket (6), at least one cross member (25-28) and the side brackets comprising a flange (11), wherein a portion extends across at least part of the front of the posts (Figure 1).

Claims 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Weider (US 3,561,608). Weider discloses a post (15) comprising a front, rear, and opposing first and second sides (Figure 3), a plurality of connectors (45: 47,49,51) welded to the post (Specification, column 3, lines 54-61), with pins (51) extending from one side of the post, through to the other side.

Claims 9-17, 22-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Trubiano (US 4,592,286). Trubiano discloses a first and second post (12), where the posts each have a front, rear and two side faces (Figure 1), a plurality of connectors (13), extending laterally from at least one of the sides of each post (Figure 1 & 3), the connectors being pins (14,14'), that connect with shelf connectors (surrounding pins 14 in apertures 20,21), to support a cantilevered shelf (11), via brackets (17) and flange (19), the shelf extending across at least part of the front of the first post to front of the second post (Figure 1), abutting the surfaces of each post (Figure 1), a second shelf (11'), with second brackets and flanges, identical to the first set (figure 4), attached via connectors (13), extending from the post at either the same height in the opposite direction (using additional connector 25), or at a new height in either the same direction or opposite direction of the first shelf (Specification, column 2, lines 55-65). The shelving structures are assembled by selecting brackets (17, shelves (11,11'), pin connectors (14,14'), posts (12) and shelving heights, and attaching the pins to the brackets at a desired heights on the posts.

Claim 33,38 and 39-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Lazarus (US 5,655,740). Lazarus discloses first and second posts (50) with front,

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rear and opposing first and second sides (Figures 5A-C), a plurality of fastening locations (18), through which connecting pins (35) extend through, from one opposing side to another (Figure 5C), first and second shelves (52) Figures 6A-6D), with brackets (16) and flange (33), the brackets connecting to the pins, and also though flanges (Figures 6A-C) the shelves being arranged laterally adjacent, stacked, or on opposing sides of the posts or, in any combination thereof (Figures 5A-C and Figure 7), wherein the shelf extends across a portion of the front of the posts (Figure 3B), and wherein the support post has a corner and the shelf extends around the corner (Figure 2D), the shelf flange releasable with opposing sides of the post (Figures 5B-C, 6A-C). The shelving structures are assembled by selecting brackets (16), shelves (52,32,36), pin connectors (35,51), posts (50) and shelving heights (Figure 7) and attaching the pins to the brackets at a desired heights on the posts.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wende as applied to claims 1-3 and 5-6 above, and further in view of Ovitz (4,197,950). Wende fails to disclose a base with legs supporting the posts as well as a covering on the shelf. Ovitz teaches a base (76) supporting the posts (10, 12), with leg supports (74) at the ends of the base, stabilizing the structure once assembled as well as a covering

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(30) on each shelf (14,16) creating a display surface. Therefore, to one of ordinary skill in the art, it would have been obvious to provide the structure of Wende with the base supports and shelf coverings, as taught by Ovitz, to stabilize the structure while assembling and in use as well as providing a display surface.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wende as applied to claims 1-3 and 5-6 above, and further in view of Weider, as advanced above. Ovitz fails to disclose welding the connectors to their respective posts. Weider teaches welding the connectors to their respective posts, adding stability to the structure. Therefore, to one of ordinary skill in the art, it would have been obvious to affix the connectors of Wende, by welding, as taught by Weider, to provide stability for the load bearing shelves.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zachariou (US 3,631,821), Hardy (5,970,887), and Cooper (4,623,065) all teach shelving systems including key features of the applicant's claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571) 272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMQ
6/14/06



RICHARD E. CHILCOT, JR.
SUPERVISORY PATENT EXAMINER